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Supreme Court of the United States.

OCTOBER TERM, 1938.

No. , Original.

THE COMMONWEALTH OF MASSACHUSETTS,
Complainant,
v.
THE STATE OF MISSOURI ET ALS.,
Respondents.

COMPLAINANT'S BRIEF IN SUPPORT OF MOTION TO FILE BILL OF COMPLAINT.

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THE CASE.

The complainant is the Commonwealth of Massachusetts. The respondents are the State of Missouri and the St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees, all citizens of the State of Missouri (Bill, p. 1).

Original jurisdiction of this Court is claimed under article III, section 2, of the Constitution, upon two grounds: that there is presented a controversy between a State and citizens of another State, and that there is a controversy between two States (Bill, p. 1, par. 2).

The Facts Briefly Summarized.

Madge Barney Blake of Boston, Massachusetts, died in Boston, July 12, 1935, leaving an estate in Massachusetts of only $12,646.02, which has been administered by the executor under her will appointed by the Massachusetts Probate Court (Bill, pp. 7, 8, pars. 6, 8). This estate has been exhausted by costs of administration and Federal taxes (Bill, p. 18, par. 15).

The decedent, during a period of fourteen years immediately prior to her death, while domiciled in Massachusetts, created three trusts and placed securities thereunder of an aggregate value, at the time of her death, of $1,850,789.77 (Bill, p. 8, par. 7). The trustees are all residents of Missouri, where the securities are held (Bill, p. 1; p. 14, par. 17).

These trusts were as follows:

February 14, 1921 trust: (value $1,513,864.51), net income payable to the settlor for life, after her death the corpus to be distributed free of trust to designated remaindermen, the settlor reserving the right of revocation (Bill, pp. 4, 5, par. 3).

January 11, 1929 trust: (value $136,472.73), net income payable to the settlor for life, and on her death to her husband for life if he survived, after the death of both the corpus to be distributed free of trust to the remaindermen under the first trust; the settlor not reserving the right of revocation (Bill, pp. 5, 6, par. 4).

May 20, 1935 trust: (value $209,452.53), net income payable to the settlor for life, and on her death for the payment of specified annuities to certain nieces and nephews, after their several deaths the corpus to be distributed free of trust to the remaindermen under the first trust; the settlor reserving the right of revocation (Bill, pp. 6, 7, par. 5).

Both Massachusetts and Missouri have inheritance tax statutes subjecting to taxation property passing by deed, grant or gift made or intended to take effect in possession or enjoyment after the death of the donor (Bill, p. 9, par. 10; p. 12, par. 12).

The Massachusetts statute imposes the tax upon intangibles only when owned by Massachusetts inhabitants (Bill, p. 12, par. 12; Appendix, *infra*, p. 19). The Missouri statute exempts from the tax intangibles owned by non-residents who reside in States extending reciprocal provisions to Missouri residents (Bill, bot. p. 10, par. 10).

Both States claim the exclusive right to impose inheritance taxes upon the trust estate; and Missouri, where the trustees reside and the property has its situs, intends to exercise its jurisdiction over the trustees and the property, to the exclusion of Massachusetts and its claim (Bill, p. 14, par. 17; Return of Mo., pp. 3, 4, par. 1). Massachusetts has "through its duly authorized officers taken such action to determine the amount of the tax due and to certify the amount due to the persons by whom the tax is payable, as required by the statute, as the circumstances . . . permit" and there is now due to it from the respondent trustees $137,000 if all the trusts are taxable, and $127,000 if only the two revocable trusts are taxable (Bill, pp. 12, 13, par. 13).

There are no persons or property in Massachusetts from whom or which Massachusetts may collect the tax (Bill, p. 13, par. 15).

The respondent trustees, all citizens of Missouri, deny their liability to pay the Massachusetts tax, on the ground of want of jurisdiction to impose it (their Return, pp. 3, 4, par. 2).

All the parties respondent voluntarily submit to the Court's jurisdiction and pray for a decision of the contro-

versy (Return of Mo., p. 4, pars. 3-5; Return of other respondents, p. 4, par. 3).

The Constitutional provisions under which original jurisdiction is claimed.

Art. III, sec. 2, of the Constitution provides:

> "Sect. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—*to controversies between two or more states;—between a state and citizens of another state;* —between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.
>
> "*In all cases* affecting ambassadors, other public ministers and consuls, and those *in which a state shall be party, the supreme court shall have original jurisdiction.* In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make." (Italics supplied.)

Provisions of the Judicial Code relative to original jurisdiction.

Judicial Code, sec. 233; 36 Stat. 1156; 28 U.S.C. sec. 341:

> "The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State

is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. . . ."

Argument.

I. There is presented a controversy between the Commonwealth of Massachusetts and citizens of the State of Missouri.

The allegations of the bill of complaint and of the return of the respondent trustees exhibit a justiciable controversy of a civil nature between the Commonwealth and the respondent citizens of Missouri.

Massachusetts by this action seeks to assert its right to impose and collect an inheritance tax upon the transmission of the intangible property in Missouri by virtue of the decedent's domicil in Massachusetts. With respect to the intangibles in the revocable trusts, Massachusetts invokes the principles announced in *Graves* v. *Elliott,* 83 Law. Ed. Ad. Op. 880 (decided May 29, 1939), that the decedent's right to revoke the trust had the attribute of property, and that control of her person and estate at the place of her domicil afforded constitutional basis for imposition of the tax. (With respect to the intangibles in the irrevocable trust Massachusetts must rely on other principles not now necessary to consider.)

In view of the recent decisions of *Graves* v. *Elliott, supra,* and *Curry* v. *McCanless* (same date, 83 Law. Ed. Ad. Op. 865), Massachusetts must now recognize that Missouri also has constitutional power to tax the transfer, though whether its statutes exercise that power with respect to the present trusts, in view of the reciprocity provision of the statute, is another question.

But Massachusetts, with the constitutional power to tax, fully exercised by and under the statute (Mass. General Laws [Ter. Ed.] c. 65, Appendix hereto, pp. 19-20), is unable to enforce payment of the tax within its own borders. As the tax is imposed upon the trustees, who are residents of Missouri and beyond the jurisdiction of Massachusetts' courts, it can enforce the tax only by recourse to the Missouri or Federal courts.

The respondent trustees deny their liability to pay the tax, on the ground that Massachusetts has no jurisdiction to impose it (their Return, p. 3, par. 2).

There exists, therefore, a controversy between Massachusetts and the respondent citizens of the State of Missouri.

Is it a controversy of such a character as to confer jurisdiction upon this Court?

The purpose of vesting in the courts of the United States jurisdiction of suits by one State against the citizens of another "was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff State were compelled to resort to the courts of the State of which the defendants were citizens."

Massachusetts v. *Mellon*, 262 U.S. 447, 480, 481.
Wisconsin v. *Pelican Insurance Co.*, 127 U.S. 265, 289.
Chisholm v. *Georgia*, 2 Dall. 419, 475.
Story on the Constitution, secs. 1638, 1682.

And if the facts present such a case, the Court may not deny jurisdiction because numerous similar cases might "be brought within its cognizance."

Minnesota v. *Hitchcock*, 185 U.S. 373, 384:

Brewer, J.:

"... In respect to the second [ground for jurisdiction] it may be said that if it were held that this court had original jurisdiction of every case of a justiciable nature in which a State was a party and in which was presented some question arising under the Constitution, laws of the United States, or treaties made under their authority, many cases, both of a legal and an equitable nature, in respect to which Congress has provided no suitable procedure, would be brought within its cognizance. To this it may be replied that this court cannot deny its jurisdiction in a case to which it is extended by the Constitution. . . ."

A controversy "between two or more states" or "between a state and citizens of another state" of which this Court has original jurisdiction must be of a justiciable nature properly determinable in a judicial proceeding.

Texas v. *Florida* (decided March 13, 1939), 83 Law. Ed. Ad. Op. 549, 554:

Stone, J.:

"So that our constitutional authority to hear the case and grant relief turns on the question whether the issue framed by the pleadings constitutes a justiciable 'case' or 'controversy' within the meaning of the Constitutional provision, and whether the facts alleged and found afford an adequate basis for relief according to accepted doctrines of the common law or equity systems of jurisprudence, . . ."

(Taking original jurisdiction of a suit among four States to determine which was the State of decedent's domicil for

inheritance tax purposes, where the estate was insufficient to meet the claims of all the States.)

Minnesota v. *Hitchcock*, 185 U.S. 373, 388:

Brewer, J.:

> "Our conclusion, therefore, is . . . that a dispute as to the title to real estate is a question of a justiciable nature, and can properly be determined in a judicial proceeding; . . ."

(Taking original jurisdiction of an action by Minnesota to enjoin the Secretary of the Interior from selling lands to which Minnesota claimed title against the United States.)

Massachusetts v. *Mellon*, 262 U.S. 447, 480:

Sutherland, J.:

> "The effect of this [Art. III, sec. 2] is not to confer jurisdiction upon the Court merely because a State is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant."

(Denying original jurisdiction of an action by Massachusetts against the Secretary of the Treasury to enjoin enforcement of the Maternity Act on the ground that Congress had usurped the reserved powers of the States, this being held to be a political rather than a judicial question.)*

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* Existence of a justiciable controversy requiring the Court's original jurisdiction was found also in the following cases:

Texas v. *White*, 7 Wall. 700, 719—

Where Texas sued to enjoin individuals from receiving payment from the United States of bonds of which Texas claimed ownership.

Florida v. *Anderson*, 91 U.S. 667—

Where Florida, as holder of railroad bonds creating lien on railroad property, sued to enjoin individuals from interfering with

A suit against an individual to collect a tax clearly presents a justiciable controversy determinable "according to accepted doctrines of the common law or equity systems of jurisprudence."

United States v. *Chamberlin*, 219 U.S. 250, 258:

Hughes, C.J.:

> "If the statute creates an obligation to pay the tax, and does not provide an exclusive remedy, the action must be regarded as well brought.
>
> "At common law, customs duties were recoverable by the Crown by an information in debt or an exchequer information in the nature of a bill in equity for discovery and account. These informations rested upon the general principle 'that in the given case the common law or the statute creates a debt, charge, or duty

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the railroad property in such a manner as to hinder the State from applying it to payment of the bonds.

Alabama v. *Burr*, 115 U.S. 413—

Where Alabama sued the stockholders and officers of a railroad company for fraudulent procurance of the State's endorsement of its bonds.

Missouri v. *Illinois & Sanitary District of Chicago*, 180 U.S. 208—

Where Missouri sued to enjoin the discharge of sewage so as to pollute the Mississippi River in Missouri.

Kansas v. *Colorado*, 185 U.S. 125—

Where Kansas sued to enjoin the diversion of a river in Colorado, naturally flowing through Kansas territory.

Georgia v. *Tennessee Copper Co.*, 206 U.S. 230, 237—

Where Georgia sued to enjoin copper companies from discharging noxious gas from their works in an adjoining State over the plaintiff's territory.

Missouri v. *Holland*, 252 U.S. 416—

Where Missouri sued to enjoin a United States game warden from enforcing the Migratory Bird Treaty Act, asserting it threatened the State's right to regulate the taking of wild game within its borders.

Iowa v. *Illinois*, 147 U.S. 1;
Georgia v. *South Carolina*, 257 U.S. 516—

Where suits were brought to settle boundary disputes between the States.

in the party personally to pay the duties immediately upon the importation; and that, therefore, the ordinary remedies lie for this, as for any other acknowledged debt due to the crown.' *United States* v. *Lyman*, 1 Mason, p. 499. See also Comyn's Digest (Tit. 'Debt,' A, 9); Dunbury's Reports, *pp. 97, 223, 225, 262.''

Milwaukee County v. *M. E. White Co.*, 296 U.S. 268, 271:

Stone, J.:

"Even if the judgment [for an income tax] is deemed to be colored by the nature of the obligation whose validity it establishes and we are free to re-examine it and, if we find it to be based on an obligation penal in character, to refuse to enforce it outside the state where rendered, see *Wisconsin* v. *Pelican Insurance Co.*, 127 U.S. 265, 292, et seq.; compare *Fauntleroy* v. *Lum*, 210 U.S. 230, still the obligation to pay taxes is not penal. It is a statutory liability, *quasi*-contractual in nature, enforcible, if there is no exclusive statutory remedy, in the civil courts by the common law action of debt or *indebitatus assumpsit*. . . . This was the rule established in the English courts before the Declaration of Independence. . . ."

Accord:

Meredith v. *United States*, 13 Pet. 486.

Dollar Savings Bank v. *United States*, 19 Wall. 227.

United States v. *Philadelphia &c. R. Co.*, 123 U.S. 113.

So a judgment for a tax is one which is entitled to full faith and credit under the Constitution.

Milwaukee County v. *M. E. White Co.*, 296 U.S. 268.

The Massachusetts inheritance tax, upon its determination by the Commissioner and certification to the persons by whom it is payable, is due and payable, and provision is made for its enforcement by suit in the probate or the supreme judicial court (Appendix, *infra*, pp. 19-20). It therefore is "a statutory liability quasi contractual in nature," subject to enforcement by suit.

It remains to consider the possible bearing of the principle which has been adopted in some jurisdictions but denied in others that the courts of one State will not enforce the revenue laws of another State.

> III Beale, Conflict of Laws, sec. 610.1.
> *Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268, 274, 275.

This rule was adopted in—

> *Moore* v. *Mitchell*, 28 Fed. (2) 997, aff'd 30 Fed. (2) 600 (C.C.A. 2) (affirmed on other grounds in 281 U.S. 18);
> *New York Trust Co.* v. *Island Oil & Transport Corp.*, 11 Fed. (2) 698 (C.C.A. 2);
> *Colorado* v. *Harbeck*, 232 N.Y. 71—

while disregarded in—

> *Holshouser Co.* v. *Gold Hill Copper Co.*, 138 N.C. 248.
> *Nashville Trust Co.* v. *Stokes* (Tenn.) 118 S.W. (2) 228 (decision of the Chancery Court of original jurisdiction, reversed on appeal on non-jurisdictional grounds, but sustained in part *sub nomine Curry* v. *McCanless* (U.S.), 83 Law. Ed. Ad. Op. 865).

The rule has been severely criticized—

29 Columbia L.R. 782;
48 Harvard L.R. 828—

and its validity is an open question in this Court.

Milwaukee County v. *M. E. White Co.*, 296 U.S. 268, 275:

Stone, J.:

"Whether one state must enforce the revenue laws of another remains an open question in this Court."

Moore v. *Mitchell*, 281 U.S. 18, 24:

Butler, J.:

"It is not necessary to express any opinion upon the question considered below; whether a federal court in one State will enforce the revenue laws of another State."

However sound the public policy may have been which gave rise to the rule in the courts of independent nations, its force is much attenuated as applied to the closely knit States of the Union and reaches the vanishing point when applied to the jurisdiction of this Court.

In *Moore* v. *Mitchell*, 30 Fed. (2) 600, 604 (C.C.A. 2), Judge Learned Hand justified the rule on the possible embarrassment of administering revenue laws of other States. Certainly this Court, with its nationwide jurisdiction over all the States, suffers from no such embarrassment. In its appellate jurisdiction it is constantly called upon to interpret and determine the validity of the taxing statutes of the various States.

The rule of *Wisconsin* v. *Pelican Insurance Company*, 127 U.S. 265, that this Court will not take original jurisdiction

of a suit by a State to enforce penal provisions of its laws should not be extended to a suit for enforcement of revenue laws. As the Court observed in *Milwaukee County v. M. E. White Co.*, 296 U.S. 268, 271 (by Stone, J.), [illegible] "the obligation to pay taxes is not penal." (The context from which this quotation is taken is given *supra*, p. 10.)

We conclude, therefore, that the present case presents a controversy between a State and the citizens of another State of which this Court will take original jurisdiction.

II. There is presented a controversy between the Commonwealth of Massachusetts and the State of Missouri.

The allegations of the bill of complaint and of the return of the respondent State exhibit a justiciable controversy of a civil nature between the Commonwealth of Massachusetts and the State of Missouri.

The purpose of vesting in the Supreme Court original jurisdiction of controversies between two or more States was to provide a means for the settlement of disputes between States which, prior to their surrender of powers in the adoption of the Constitution, would have been settled by diplomacy or war.

Hans v. *Louisiana*, 134 U.S. 1, 15:

Bradley, J.:

> "Some things, undoubtedly, were made justiciable [by the Constitution] which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution. . . . The establishment of this new branch of jurisdiction seemed to be necessary from the extinguishment of diplomatic relations between the States."

Missouri v. *Illinois & Sanitary District of Chicago*, 180 U.S. 208, 241:

Shiras, J.:

"Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering."

And see—

Georgia v. *Tennessee Copper Co.*, 206 U.S. 230, 237.

The States as well as private individuals have sought a remedy against the manifest injustices of multiple taxation by invoking the due process clause of the Federal Constitution, but it now appears to be definitely established that there exists no Constitutional immunity against double taxation.

Curry v. *McCanless* (U.S.), 83 Law. Ed. Ad. Op. 865.

Graves v. *Elliott* (U.S.), 83 Law. Ed. Ad. Op. 880.

Worcester County Trust Co. v. *Riley*, 302 U.S. 292, 299.

New Jersey v. *Pennsylvania*, 287 U.S. 580.

And see—

"And Again Multiple Taxation?" (1938), 26 Georgetown L.J. 288, and

"Maguire versus Trefry Reclaimed" (1939), 29 Georgetown L.J. 281,

by Professor Francis C. Nash.

The States, therefore, having surrendered their rights to make treaties *inter se*, must find their only remedy against double taxation in reciprocal legislation.

First National Bank of Boston v. *Maine*, 284 U.S. 312, 334:

Stone, J. (dissenting; Holmes and Brandeis, JJ., concurring):

> ". . . Even if it be assumed that some protection from multiple taxation, which the Constitution has failed to provide, is desirable, and that this Court is free to supply it, that result would seem more likely to be attained, without injustice to the states, by familiar types of reciprocal state legislation, than by stretching the due process clause to cover this case. See 28 Columbia L. Rev. 806; 43 Harvard L. Rev. 641. . . ."

Kidd v. *Alabama*, 188 U.S. 730, 732:

Holmes, J.:

> "No doubt it would be a great advantage to the country and to the individual States if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided. But the Constitution of the United States does not go so far."

Both Massachusetts and Missouri have resorted to this expedient.

Missouri has enacted reciprocal legislation under which is exempted from taxation the transfer of intangibles where the transferor at the time of death was a resident

of a State which at that time did not impose a transfer or death tax in respect of intangible property of residents of other States or if the laws of the State of residence contained a reciprocal exemption provision (Missouri Rev. Stats. 1929, c. 1, art. 21, sec. 576 (Bill, pp. 9-11, par. 10)).

Massachusetts in the past has had various reciprocity statutes,* but since 1927 (St. 1927, c. 156) it has granted complete exemption from the inheritance tax to intangible property not belonging to its inhabitants (Mass. General Laws [Ter. Ed.] c. 65, § 1, Appendix hereto, p. 19).

Massachusetts and its residents, therefore, are entitled to the immunity offered by the Missouri statute.

A controversy has now arisen between Massachusetts and Missouri over the enforcement of these reciprocal provisions.

An inhabitant of Massachusetts has died leaving incorporeal property, subject to its inheritance tax, located in Missouri. Missouri not only resists the right of Massachusetts to enforce its tax, but, in complete disregard of its own reciprocity law, seeks to impose its own tax upon this property of a Massachusetts decedent. The bill avers that "the State of Missouri intends to exercise its jurisdiction over the Trustees and the trust property within its jurisdiction, to subject such persons and property to its own succession tax, to the exclusion of the complainant and of the taxes of the complainant" (Bill, p. 14, par. 17). Its conduct is analogous to violation of a treaty between independent States.

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* St. 1907, c. 563, sec. 3, partial reciprocity.
St. 1909, c. 490, pt. II, sec. 1, partial reciprocity.
St. 1912, c. 678, complete exemption.
St. 1916, c. 268, complete exemption.
St. 1920, c. 396, partial reciprocity.
St. 1922, c. 403, sec. 3, partial reciprocity.
St. 1925, c. 338, sec. 1, complete reciprocity.
St. 1927, c. 156, complete exemption.

If the evils of multiple taxation are to be solved by reciprocal legislation of the States, as this Court has itself suggested, it is essential that the States have a forum where they can compel recalcitrant States to observe the reciprocity their legislatures have provided. The Supreme Court is the only available forum.

Massachusetts, to whom the tax is owed, has a proprietary interest in its collection; this embraces a proprietary interest in the enforcement of the reciprocal provisions of the law of Missouri, whose unlawful exactions would diminish the taxable estate, and as a result the amount of the Massachusetts tax.

A decision by this Court binding upon the State of the situs would have a salutary effect in solving the problem of multiple taxation. States of the situs would be readier to assist the domiciliary States in the enforcement of the latters' tax laws, and trustees holding such property in their possession would find it more difficult to escape their just obligations.

We conclude, therefore, that the present case presents a controversy between two States of which this Court will take original jurisdiction.

III. If the Court has jurisdiction upon either ground but not the other, the jurisdiction is not lost because of the joinder of parties not necessary to such jurisdiction.

In *Texas* v. *Florida* [decided March 13, 1939], 83 Law. Ed. Ad. Op. 549, 553, which was a controversy between States to which the sole beneficiary of the decedent's estate was joined as a party, the Court held:

Stone, J.:

"The present suit is between states, and the other jurisdictional requirements being satisfied, the indi-

vidual parties whose presence is necessary or proper for the determination of the case or controversy between the states are properly made parties defendant. Cf. *United States* v. *West Virginia*, 295 U.S. 463, 470" (where a similar situation was presented).

Certainly the State of Missouri is a proper, if not a necessary, party to this controversy. It ought to have an opportunity to present the facts as well as its arguments to the Court, and it ought to be bound by such decree as this Court may make.

In the present case, moreover, all of the respondents yield to the Court's jurisdiction and none raises any issue of misjoinder.

Respectfully submitted,
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Appendix.

Material Provisions of the Massachusetts Statutes.

Massachusetts General Laws [Tercentenary Edition] c. 65, sec. 1:

"All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, *belonging to inhabitants of the commonwealth*, . . . which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth . . . made or intended to take effect in possession or enjoyment after his death . . . shall be subject to a tax [etc.]: . . ."

Sec. 6:

"Administrators, executors and trustees, grantees or donees under conveyances or gifts made during the life of the grantor or donor . . . shall be liable for the taxes imposed by this chapter, with interest, until the same have been paid."

Sec. 7:

"Taxes imposed by this chapter upon property or interests therein, passing by deed, grant or gift to take effect in possession or enjoyment after the death of the grantor or donor . . . shall be payable by the grantee or donee at the expiration of one year [from the date] . . . when his right of possession or enjoyment accrues."

Sec. 27:

"The commissioner shall determine the amount of tax due and payable upon any estate or any part thereof and shall certify the amount so due and payable to the

persons by whom the tax is payable. . . ." (Provision is made for abatement by petition in equity in the probate court.)

Sec. 30:

"The probate court having jurisdiction of the settlement of the estate of the decedent shall, subject to appeal as in other cases, hear and determine all questions relative to the tax imposed by this chapter, . . . and the commissioner shall represent the commonwealth in any such proceedings. If the court finds that any tax remains due, it shall order the executor, administrator or trustee to pay the same, with interest and costs, and execution shall be awarded against the goods and estate of the deceased in the hands of the executor, administrator or trustee . . ."

Sec. 32:

"The commissioner shall commence proceedings for the recovery of any of the taxes imposed by this chapter . . . within six months after the same become payable; . . ."

Sec. 33:

"Taxes imposed by this chapter . . . may be recovered by the commissioner in an action of contract brought in the name of the commonwealth, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the commissioner. . . ."